

## Office of the Secretary, Interior

## § 4.702

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department's position as a party to the proceeding was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded. If neither the applicant nor the Department appeals within 30 days from receipt of the adjudicative officer's decision, this decision will be the final Departmental decision.

### § 4.617 Appeals Board review.

If review is sought by the applicant or the Department, the decision of the adjudicative officer will be reviewed by the appropriate appeals board in accordance with the Department's procedures for the type of underlying proceeding involved. The appeals board will then issue the final Departmental decision on the application.

### § 4.618 Judicial review.

Judicial review of final Departmental decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### § 4.619 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Assistant Secretary for Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award has been completed, must also be included.

## Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: 5 U.S.C. 301.

### § 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

### § 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

### § 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.